

STATES OF JERSEY



DRAFT SOCIAL SECURITY (AMENDMENT OF LAW NO.18) (JERSEY) REGULATIONS 202- (P.24/2023): COMMENTS

**Presented to the States on 25th May 2023
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

On 28th April 2023, [P.24/2023 – Draft Social Security \(Amendment of Law No.18\) \(Jersey\) Regulations 202-](#) (hereafter referred to as the “draft Regulations”) was lodged in the States Assembly by the Minister for Social Security. The purpose of the proposed Regulations is to clarify certain references in the [Social Security \(Jersey\) Law 1974](#) (hereafter referred to as the “the Law”). Under Articles 50 and 51 of that Law, the Minister has the power to amend the Law by Regulations. The draft Regulations propose two separate changes to the Law and are as follows:

- Regulation 2 (which would amend Article 8A) provides clarity in Legislation as to how contribution factors are rounded in their calculation to align with operational practice.
- Regulation 3 (which would amend Article 15) removes the provision that is duplicated in the [Social Security \(Incapacity Benefits\) \(Jersey\) Order 2004](#). Article 15 of the Law currently stipulates that persons in receipt of Short-Term Incapacity Allowance (STIA) are prohibited from undertaking any type of work whilst in receipt of the benefit. The removal of this provision will allow the Minister to make changes by Order, at a later date, that forms part of her plans to modernise Jersey’s incapacity benefit.

Findings

Regulation 3

The Panel was briefed on the proposed draft Regulations on 4th May 2023 by the Minister for Social Security and officers from the Departments of Customer and Local Services and Strategic Policy, Planning and Performance.

The briefing predominantly focused on Regulation 3 and the proposed changes to Article 15 of the Social Security (Jersey) Law 1974. The Panel was advised that the Proposition proposes to remove the provision contained within the Regulation that states a person is not entitled to Short-Term Incapacity Allowance “for any period in which he or she works”. It was explained that the draft Regulation itself would not change a person’s rights or responsibilities or the rules by which individuals can receive incapacity benefits. The current wording of the Social Security (Incapacity Benefits) (Jersey) Order 2004 contains a very similar provision in Article 2(1)(c) and, as such, until the Minister revises this Order, the rules that prohibit those in receipt of STIA from working will still be in place.

Whilst it was understood that these Draft Regulations would not have any effect on claims to STIA, the Panel felt it necessary to understand the future intentions of the Minister which gave rise to these proposals. The Panel was advised that the Minister is committed to a major overhaul of incapacity benefits which includes a new service to support people who have health conditions to undertake some work whilst still claiming STIA. If the draft Regulations are approved, the Minister for Social Security will proceed to amend the Order to make the above possible. We were informed that the type of work allowed whilst receiving STIA would be agreed with a specially trained officer within the Customer and Local Services Department and would form part of a “return of work” plan. This could include voluntary work, therapeutic work or any phased or partial returns to work agreed by the worker and their employer. The Panel noted that all of these were not possible under Jersey’s current legislation and, if the draft

Regulations are approved and the Order subsequently amended, it would bring the Island in line with the UK and Guernsey's Laws.

The officers advised the Panel of their commitment to ensure that the new service would not become a "free for all" and that any adjustment to work duties would be agreed by the specialist officers. This would ensure that employers are able to cooperate with the new system for the benefit of the individual, employer and the labour market. It was explained that under the current system in the UK, an individual can begin a phased approach back to work but can then stop if necessary whilst still being financially protected under the law. The Panel questioned whether an individual, who is on low income and engages with the system, would have their Social Security credits affected. It was advised that a person's Social Security credits would remain in full, as a complete record would be made up by their sickness and partial return to work. The individual would essentially remain completely protected by STIA as they currently are.

The Minister and her officers were keen to emphasise that the intention was not to design a system which forced sick people into work before they were ready. It was agreed by all parties that that type of system would be detrimental to all involved. It was explained that the intention of the new system is to deliver a person-centred approach which will allow the individual to make the best choices for themselves. The Panel was told that the new system will give options to workers as well as support them and their employers in ensuring any work modifications are sustainable and provide benefits to the worker. It is important to note that under the new system a worker could choose to remain fully absent from work whilst claiming STIA if they felt that was the best for themselves and their situation. It was explained that the intention would be to coordinate the training of specialist officers in vocational rehabilitation to ensure the system ran effectively and as intended.

The Panel questioned whether this scheme would be open to everyone who pays Social Security contributions or whether individuals would be required to make additional contributions in order to access the scheme. It was advised that no further contributions would need to be made and that the system would, in effect, pay for itself due to the financial benefit of having more workers re-entering the labour market. The Minister and her officers were confident that the proposed changes will reduce long-term costs to the scheme, as well as Jersey's healthcare system and economy.

The officers advised the Panel that, at first, referrals of individuals who may benefit from a phased/partial or adjusted back to work plan will only be accepted from General Practitioners (GPs). However, when the Panel queried whether this could be extended to include other healthcare professionals, due to the high cost of GP fees, the officer confirmed that the intention was to extend the eligible referees to include a range of healthcare providers, including, for example, physiotherapists, at a later date.

The Panel asked whether statistics had been collected on the number of individuals receiving Short-Term Incapacity Allowance benefits who wanted to return to work before being fully signed back to work. It was confirmed that there was currently no means of capturing this information, but that the Department had received comments from employers about why employee rights in Jersey differed to the rights of employees, in receipt of STIA, in Guernsey.

The Panel questioned whether the scheme would have an impact on discrimination, namely age discrimination since it would enable a demographic more prone to illness

back to work earlier. It was confirmed that the change of rules would, but it was explained that the scheme would be disability positive. The Panel was advised that vocational rehabilitation was an affirmative scheme, typically used by unions and disability advocates.

The Panel raised concerns about how small businesses might cope with the proposed changes and having to accommodate phased or partial returns to work. The Minister and her officers reassured the Panel that, whilst support and advice will be offered to businesses to try and find solutions to enable employees to return to work on this basis, the scheme would be voluntary and there will be no obligation for either the employer or the employee to agree to the work plan. Whilst the change to the rules may benefit many businesses by allowing employers to retain expertise, it is acknowledged that the scheme will not work for everybody. Importantly, the Panel learnt that it had become evident to the Minister and her officers through stakeholder engagement that targeted support would be needed for employers. As a result of this finding the intention was now to offer a toolkit and best practice examples upon commencement of the new service.

In respect of the timeline for this work, the Panel was advised that, if the draft Regulations are approved by the States Assembly on 13th June, the Minister will proceed with amending the Social Security (Incapacity Benefits) (Jersey) Order 2004. It was further noted that the project team within Customer and Local Services is currently designing a new system, with the aim of launching the first phase later this year. The initial focus of the scheme will be on mental health and musculoskeletal issues with the intention of expanding to other conditions once the scheme had been reviewed. It was also noted that GPs would receive accredited training and an electronic referral mechanism would be established before the service was launched. The officers wished to emphasise that detailed briefings would be offered, and the views of GPs, employees and employers would all be taken into consideration before the system received final sign-off by the Government and well in advance of any changes going live.

On 11th May, the Minister for Social Security helpfully shared the draft Social Security (Incapacity Benefits Phased Return to Work – Amendment) (Jersey) Order 202- with the Panel in confidence. The Panel asked several questions with regards to the Order but, overall, was content with the detail provided. The Panel does, however, wish to emphasise the importance of effective communication when the new service has been developed and before it is rolled out. The Order itself (due to it not being a legal matter) does not emphasise the need for all parties (health professionals, specialist officers, employee and employer) to be in agreement of a plan that has been designed to assist the person in receipt of STIA back to work. It is therefore imperative that everyone is made aware of this at the earliest possible opportunity, and it is appropriately publicised before the new service is launched.

Regulation 2

As stated previously, the purpose of Regulation 2 is to clarify in legislation how contribution factors are rounded in their calculation in current practice. The report to the Proposition confirms that a contribution factor measures how much of a contribution record an individual has over a period of time in order to determine a person's eligibility to, and the value of, any contributory benefits or Social Security pension claimed. Whilst in practice contribution rates are either rounded up or down to the nearest decimal place,

the Law currently requires all calculations to be rounded up. The proposed amendment to Article 8A of the Social Security (Jersey) Law 1974, will align the legislation to operational practice.

The Panel was advised that when Article 8A was added to the Law in 2012, the intention was to capture the existing rules. However, the rules on rounding, when calculating contribution factors, were written in Law incorrectly. The Panel was also advised that this mistake has only recently come to light, hence why the Minister is proposing the amendment to the Article now.

When asked whether there would be any unintended consequences or impacts as a result of the change to the Law, Departmental officers advised that, if approved, there would be no extra costs or consequences. However, it was noted that if the States Assembly does not approve Regulation 2 there could be an increased cost to the Social Security Fund, depending on the resulting actions taken by the Minister. For example, if the current rounding practice of contribution factors was changed there would be a small impact (24 pence per week, £13 per year) on approximately 45% of future survivors and old age pensions claims. Due to the expected number of pensioners with a Social Security pension in the future, the increased cost to the Fund would eventually reach £200,000-£300,000 a year.

Conclusion

The Panel sees the proposal to amend Article 15 of the Social Security (Jersey) Law 1974 and the subsequent development of a new system as a positive change to what we currently have. Enabling people who are in receipt of Short-Term Incapacity Allowance to choose to undertake some type of work could not only improve their recovery and mental health, but also gives individuals some control over their own circumstances. The Panel is satisfied from the evidence it has received that the intention of this change is not to force an individual back into work before they are ready. Nor does the Panel believe that it will have any negative impact on employers, including small businesses. All parties will have to agree to the “return to work” plan that is developed and there will be no obligation for either the employee or employer to take it forward. The Panel is happy to learn that businesses will be offered support before, and whilst, navigating the new service and that further engagement will be undertaken with local employers, GPs and charitable sectors before finalising plans.

Overall, the Panel is content with the Draft Order and understands the need to balance the requirement for some detail but without including unnecessary operational details in legislation. Whilst understanding the reasons why informal agreements are not referenced in legislation, we believe it is imperative that everyone utilising the new service understands that all parties need to agree to the “return to work” plan for it to be taken forward. Therefore, effective communication with businesses and individuals before the new service is implemented will be key to its success and uptake.

With regards to Regulation 2, the Panel accepts that the proposed change is simply reflecting what already happens in practice and acknowledges the potential cost implications of not approving the draft proposals. The Panel is therefore happy to support the amendment to Article 8A of the Law.